CLAIMS

Claims 1 through 22 are cancelled.

23. (Previously presented) A method for assessing endothelial function, comprising:

a) recording patient's temperature at location distal to a selected site of creating an arterial occlusion;

b) compressing for a given period of time the patient's artery to impede distal blood flow and thereby creating a vasodilating stimulant;

c) removing the compression and thereby allowing blood flow to resume;

d) continuously recording the patient's temperature distal to the site of arterial occlusion; and

e) assessing the patient's endothelial function based on said recorded changes in temperature.

24. (Previously presented) The method of claim 23, wherein providing a vasodilating stimulant comprises occluding blood flow.

25. (Previously presented) The method of claim 23, wherein the patient's artery is the brachial artery.

26. (Previously presented) The method of claim 23, wherein said temperature recording further comprises monitoring a change in temperature at one of the patient's fingertips distal to the arterial occlusion.

27. (Previously presented) The method of claim 24, wherein the vasodilating stimulant comprises occluding blood flow in the patient's arm.

28. (Previously presented) The method of claim 23, wherein the compression of the patient's artery is located in an extremity of at least one of (i) a leg, (ii) an arm, (iii) a wrist, or (iv) a finger.

29. (Previously presented) The method of claim 23, wherein said monitoring occurs from a time prior to the beginning of said compression until a time after said ceasing when said blood temperature has stabilized.

INTERVIEW

The Applicant and Examiner conducted an interview on July 1, 2010. Discussed was the Examiner withdrawal of Applicant's new claims 23 through 31. This matter was discussed again on August 13, 2010 wherein the Examiner agreed to exam claims 23 through 29 as part of a Request for Continued Examination upon the Applicant cancelling claims 5, 6, 9-12, 14, 15.

DOUBLE PATENTING REJECTION

There is no commonality of ownership between the instant application (S/N 10/525,255) and co-pending application (S/N 11/871,901). No joint development agreement existed between the assignees. The Double Patenting rejection is inappropriate.

The invention of the instant application precedes the invention of co-pending application. At issue are the claims of the instant application claiming priority to August 23, 2002. The later filed disclosure of S/N 11/871,901 is not a reference against the instant application.

As the examiner acknowledges, the claims of the cited co-pending application differ from the instant application in that the claims of the co-pending application "are specifically for assessing vascular function." The claims of the instant application are not so limited.

SECTION 112 FIRST PARAGRAPH REJECTIONS

The cancellation of claims 5, 6, 9-12, 14 and 15 make the Examiner's rejection under Section 112 first paragraph moot.

SECTION 112 SECOND PARAGRAPH REJECTIONS

The cancellation of claims 5, 6, 9-12, 14 and 15 make the Examiner's rejection under Section 112 second paragraph moot.

103 REJECTION

The Examiner has rejected the now cancelled claims as being unpatentable over Drzewiecki et al. 6,338,719 in view of Goor et al. 6,319205. The Applicant respectfully asserts that Drzewiecki and Goor are not applicable to the Applicant's invention as defined in claims 23 through 29.

As previously stated, Drzewiecki utilizes a combination of (i) an inflatable blood pressure cuff with a hand pump and blood pressure gauge and (ii) a plurality of equations for computing arterial volume compliance, arterial area compliance and

arterial lumen area. The apparatus is a plethysmograph, i.e., an instrument for determining and registering variation in the size of an organ, limb, or part resulting from changes in the amount of blood present or passing through it. See Merriam-Webster OnLine. The Applicant is not determining or registering variation in the size of an organ, limb or part resulting from changes in the amount of blood present or passing through it.

Drzewiecki contains no component for measuring temperature.

Goor discloses a method and apparatus for providing an indication of myocardial ischemia or sleep apnea. The apparatus includes a finger probe which is designed to apply pressure. The pressure is raised to a pressure which is "sufficient to unload the arterial walls and to prevent venous pooling". In the stated preferred embodiment, the pressure is automatically raised to 70 mm Hg. Col 18, line 62 -67. It should be noted that in this pressure environment, the finger inserted into the pressurized finger probe is unsuitable for measurement of temperature.

As stated above, neither Drzewiecki nor Goor disclose critical elements of the Applicant's invention, i.e., monitoring temperature. With due respect to the Examiner, a passing reference to the optional addition of heat to a glove is not equivalent to the critical element of the Applicant's invention. The Examiner references a controller (component 17) that monitors the temperature of the finger. The Examiner is incorrect, the controller is preset to a selected temperature. The temperature of the glove is controlled. There is no monitoring of the temperature of the finger. See col. 26, lines 26 – 30. Stated differently, Goor does not teach a method of monitoring temperature of the hand but rather a method of controlling temperature of a glove.

Further the Applicant does not employ a plethysmograph. Although the full definition of the word is stated above, it is sufficient that a plethysmograph is a device for measuring volume. The Applicant is not measuring volume. The Applicant is monitoring changes in temperature in response to vasodilating events.

SUMMARY

Claims 5, 6, 9-12, 14 and 15 have been cancelled. Claim 23 through 29 are to be examined in response to the Request for Continued Examination being filed with this response. Claims 23 through 29 clearly delineate the subject matter of the elected invention. The Applicant has further analyzed the prior art patents cited by the Examiner. The Applicant has shown that the cited patents do not contain the elements of the Applicant's invention as defined by claims 23 through 29.

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CERTIFICATE OF TRANSMISSION

The undersigned attests based upon personal knowledge that the above document was transmitted through the EFS-Web system on September 10, 2010.

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